

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill Nos. 865 & 866, Page 20, Section 379.940, Line 89, by inserting after all of said section
3 and line the following:
4

5 "404.1100. Sections 404.1100 to 404.1110 shall be known and may be cited as the
6 "Designated Health Care Decision-Maker Act".

7 404.1101. As used in sections 404.1100 to 404.1110, the following terms mean:

8 (1) "Artificially supplied nutrition and hydration", any medical procedure whereby nutrition
9 or hydration is supplied through a tube inserted into a person's nose, mouth, stomach, or intestines,
10 or nutrients or fluids are administered into a person's bloodstream or provided subcutaneously;

11 (2) "Best interests":

12 (a) Promoting the incapacitated person's right to enjoy the highest attainable standard of
13 health for that person;

14 (b) Advocating that the person who is incapacitated receive the same range, quality, and
15 standard of health care, care, and comfort as is provided to a similarly situated individual who is not
16 incapacitated; and

17 (c) Advocating against the discriminatory denial of health care, care, or comfort, or food or
18 fluids on the basis that the person who is incapacitated is considered an individual with a disability;

19 (3) "Designated health care decision-maker", the person designated to make health care
20 decisions for a patient under section 404.1104, not including a person acting as a guardian or an
21 agent under a durable power of attorney for health care or any other person legally authorized to
22 consent for the patient under any other law to make health care decisions for an incapacitated
23 patient;

24 (4) "Disability" or "disabled" shall have the same meaning as defined in 42 U.S.C. Section
25 12102, the Americans with Disabilities Act of 1990, as amended; provided that the term "this
26 chapter" in that definition shall be deemed to refer to the Missouri health care decision-maker act;

27 (5) "Health care", a procedure to diagnose or treat a human disease, ailment, defect,
28 abnormality, or complaint, whether of physical or mental origin and includes:

29 (a) Assisted living services, or intermediate or skilled nursing care provided in a facility
30 licensed under chapter 198;

31 (b) Services for the rehabilitation or treatment of injured, disabled, or sick persons; or

32 (c) Making arrangements for placement in or transfer to or from a health care facility or
33 health care provider that provides such forms of care;

34 (6) "Health care facility", any hospital, hospice, inpatient facility, nursing facility, skilled
35 nursing facility, residential care facility, intermediate care facility, dialysis treatment facility,
36 assisted living facility, home health or hospice agency; any entity that provides home or community-

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1 based health care services; or any other facility that provides or contracts to provide health care, and
 2 which is licensed, certified, or otherwise authorized or permitted by law to provide health care;

3 (7) "Health care provider", any individual who provides health care to persons and who is
 4 licensed, certified, registered, or otherwise authorized or permitted by law to provide health care;

5 (8) "Incapacitated", a person who is unable by reason of any physical or mental condition to
 6 receive and evaluate information or to communicate decisions to such an extent that the person lacks
 7 capacity to meet essential requirements for food, clothing, shelter, safety, or other care such that
 8 serious physical injury, illness, or disease is likely to occur;

9 (9) "Patient", any adult person or any person otherwise authorized to make health care
 10 decisions for himself or herself under Missouri law;

11 (10) "Physician", a treating, attending, or consulting physician licensed to practice medicine
 12 under Missouri law;

13 (11) "Reasonable medical judgment", a medical judgment that would be made by a
 14 reasonably prudent physician, knowledgeable about the case and the health care possibilities with
 15 respect to the medical conditions involved.

16 404.1102. The determination that a patient is incapacitated shall be made as set forth in
 17 section 404.825. A health care provider or health care facility may rely in the exercise of good faith
 18 and in accordance with reasonable medical judgment upon the health care decisions made for a
 19 patient by a designated health care decision-maker selected in accordance with section 404.1104,
 20 provided two licensed physicians determine, after reasonable inquiry and in accordance with
 21 reasonable medical judgment, that such patient is incapacitated and has neither a guardian with
 22 medical decision-making authority appointed in accordance with chapter 475, an attorney in fact
 23 appointed in a durable power of attorney for health care in accordance with sections 404.800 to
 24 404.865, is not a child under the jurisdiction of the juvenile court under section 211.031, nor any
 25 other known person who has the legal authority to make health care decisions.

26 404.1103. Upon a determination that a patient is incapacitated, the physician or another
 27 health care provider acting at the direction of the physician shall make reasonable efforts to inform
 28 potential designated health care decision-makers set forth in section 404.1104 of whom the
 29 physician or physician's designee is aware, of the need to appoint a designated health care decision-
 30 maker. Reasonable efforts include, without limitation, identifying potential designated health care
 31 decision makers as set forth in subsection 1 of section 404.1104, a guardian with medical decision-
 32 making authority appointed in accordance with chapter 475, an attorney in fact appointed in a
 33 durable power of attorney for health care in accordance with sections 404.800 to 404.865, the
 34 juvenile court under section 211.031, or any other known person who has the legal authority to
 35 make health care decisions, by examining the patient's personal effects and medical records. If a
 36 family member, attorney in fact for health care or guardian with health care decision-making
 37 authority is identified, a documented attempt to contact that person by telephone, with all known
 38 telephone numbers and other contact information used, shall be made within twenty-four hours after
 39 a determination of incapacity is made as provided in section 404.1102.

40 404.1104. 1. If a patient is incapacitated under the circumstances described in section
 41 404.1102 and is unable to provide consent regarding his or her own health care, and does not have a
 42 legally appointed guardian, an agent under a health care durable power of attorney, is not under the
 43 jurisdiction of the juvenile court, or does not have any other person who has legal authority to
 44 consent for the patient, decisions concerning the patient's health care may be made by the following
 45 competent persons in the following order of priority, with the exception of persons excluded under
 46 subsection 4 of section 404.1104:

47 (1) The spouse of the patient, unless the spouse and patient are separated under one of the
 48 following:

- 1 (a) A current dissolution of marriage or separation action;
- 2 (b) A signed written property or marital settlement agreement;
- 3 (c) A permanent order of separate maintenance or support or a permanent order approving a
- 4 property or marital settlement agreement between the parties;
- 5 (2) An adult child of the patient;
- 6 (3) A parent of the patient;
- 7 (4) An adult sibling of the patient;
- 8 (5) Grandparent or adult grandchild;
- 9 (6) Niece or nephew or the next nearest other relative of the patient, by consanguinity or
- 10 affinity;
- 11 (7) A person who is a member of the same community of persons as the patient who is
- 12 bound by vows to a religious life and who conducts or assists in the conducting of religious services
- 13 and actually and regularly engages in religious, benevolent, charitable, or educational ministry, or
- 14 performance of health care services;
- 15 (8) Any nonrelative who can demonstrate that he or she has a close personal relationship
- 16 with the patient and is familiar with the patient's personal values; or
- 17 (9) Any other person designated by the unanimous mutual agreement of the persons listed
- 18 above who is involved in the patient's care.
- 19 2. If a person who is a member of the classes listed in subsection 1 of this section,
- 20 regardless of priority, or a health care provider or a health care facility involved in the care of the
- 21 patient, disagrees on whether certain health care should be provided to or withheld or withdrawn
- 22 from a patient, any such person, provider, or facility, or any other person interested in the welfare of
- 23 the patient may petition the probate court for an order for the appointment of a temporary or
- 24 permanent guardian in accordance with subsection 8 of this section to act in the best interest of the
- 25 patient.
- 26 3. A person who is a member of the classes listed in subsection 1 of this section shall not be
- 27 denied priority under this section based solely upon that person's support for, or direction to provide,
- 28 withhold or withdraw health care to the patient, subject to the rights of other classes of potential
- 29 designated decision-makers, a healthcare provider, or healthcare facility to petition the probate court
- 30 for an order for the appointment of a temporary or permanent guardian under subsection 8 of this
- 31 section to act in the best interests of the patient.
- 32 4. Priority under this section shall not be given to persons in any of the following
- 33 circumstances:
- 34 (1) If a report of abuse or neglect of the patient has been made under section 192.2475,
- 35 198.070, 208.912, 210.115, 565.188, 630.163 or any other mandatory reporting statutes, and if the
- 36 health care provider knows of such a report of abuse or neglect, then unless the report has been
- 37 determined to be unsubstantiated or unfounded, or a determination of abuse was finally reversed
- 38 after administrative or judicial review, the person reported as the alleged perpetrator of the abuse or
- 39 neglect shall not be given priority or authority to make health care decisions under subsection 1 of
- 40 this section, provided that such a report shall not be based on the person's support for, or direction to
- 41 provide, health care to the patient;
- 42 (2) If the patient's physician or the physician's designee reasonably determines, after making
- 43 a diligent effort to contact the designated health care decision-maker using known telephone
- 44 numbers and other contact information and receiving no response, that such person is not reasonably
- 45 available to make medical decisions as needed or is not willing to make health care decisions for the
- 46 patient; or
- 47 (3) If a probate court in a proceeding under subsection 8 of this section finds that the
- 48 involvement of the person in decisions concerning the patient's health care is contrary to instructions

1 that the patient had unambiguously, and without subsequent contradiction or change, expressed
 2 before he or she became incapacitated. Such a statement to the patient's physician or other health
 3 care provider contemporaneously recorded in the patient's medical record and signed by the patient's
 4 physician or other health care provider shall be deemed such an instruction, subject to the ability of
 5 a party to a proceeding under subsection 8 of this section to dispute its accuracy, weight, or
 6 interpretation.

7 5. (1) The designated health care decision-maker shall make reasonable efforts to obtain
 8 information regarding the patient's health care preferences from health care providers, family,
 9 friends, or others who may have credible information.

10 (2) The designated health care decision-maker, and the probate court in any proceeding
 11 under subsection 8 of this section, shall always make health care decisions in the patient's best
 12 interests, and if the patient's religious and moral beliefs and health care preferences are known and
 13 not inconsistent with the patient's best interests, in accordance with those beliefs and preferences.

14 6. This section does not authorize the provision or withholding of health care services that
 15 the patient has unambiguously, without subsequent contradiction or change of instruction, expressed
 16 to the patient's physician or other health care provider that he or she would or would not want at a
 17 time when such patient had capacity. Such a statement to the patient's physician or other health care
 18 provider, contemporaneously recorded in the patient's medical record and signed by the patient's
 19 physician or other health care provider, shall be deemed such evidence, subject to the ability of a
 20 party to a proceeding under subsection 8 of this section to dispute its accuracy, weight, or
 21 interpretation.

22 7. A designated health care decision-maker shall be deemed a personal representative for the
 23 purposes of access to and disclosure of private medical information under the Health Insurance
 24 Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Section 1320d and 45 CFR 160-
 25 164.

26 8. Nothing in sections 404.1100 to 404.1110 shall preclude any person interested in the
 27 welfare of a patient including, but not limited to, a designated health care decision-maker, a member
 28 of the classes listed in subsection 1 of this section regardless of priority, or a health care provider or
 29 health care facility involved in the care of the patient, from petitioning the probate court for the
 30 appointment of a temporary or permanent guardian for the patient including expedited adjudication
 31 under chapter 475.

32 9. Pending the final outcome of proceedings initiated under subsection 8 of this section, the
 33 designated health care decision-maker, health care provider, or health care facility shall not withhold
 34 or withdraw, or direct the withholding or withdrawal, of health care, nutrition, or hydration whose
 35 withholding or withdrawal, in reasonable medical judgment, would result in or hasten the death of
 36 the patient, would jeopardize the health or limb of the patient, or would result in disfigurement or
 37 impairment of the patient's faculties. If a health care provider or a health care facility objects to the
 38 provision of such health care, nutrition, or hydration on the basis of religious beliefs or sincerely
 39 held moral convictions, the provider or facility shall not impede the transfer of the patient to another
 40 health care provider or health care facility willing to provide it, and shall provide such health care,
 41 nutrition, or hydration to the patient pending the completion of the transfer. For purposes of this
 42 section, artificially supplied nutrition and hydration may be withheld or withdrawn during the
 43 pendency of the guardianship proceeding only if, based on reasonable medical judgment, the
 44 patient's physician and a second licensed physician certify that the patient meets the standard set
 45 forth in subdivision (2) of subsection 1 of section 404.1105. If tolerated by the patient and adequate
 46 to supply the patient's needs for nutrition or hydration, natural feeding should be the preferred
 47 method.

48 404.1105. 1. No designated health care decision-maker may, with the intent of hastening or

1 causing the death of the patient, authorize the withdrawal or withholding of nutrition or hydration
 2 supplied through either natural or artificial means. A designated health care decision-maker may
 3 authorize the withdrawal or withholding of artificially supplied nutrition and hydration only when
 4 the physician and a second licensed physician certify in the patient's medical record based on
 5 reasonable medical judgment that:

6 (1) Artificially supplied nutrition or hydration are not necessary for comfort care or the
 7 relief of pain and would serve only to prolong artificially the dying process and where death will
 8 occur within a short period of time whether or not such artificially supplied nutrition or hydration is
 9 withheld or withdrawn; or

10 (2) Artificially supplied nutrition or hydration cannot be physiologically assimilated or
 11 tolerated by the patient.

12 2. When tolerated by the patient and adequate to supply the patient's need for nutrition or
 13 hydration, natural feeding should be the preferred method.

14 3. The provisions of this section shall not apply to subsection 3 of section 459.010.

15 404.1106. If any of the individuals specified in section 404.1104 or the designated health
 16 care decision-maker or physician believes the patient is no longer incapacitated, the patient's
 17 physician shall reexamine the patient and determine in accordance with reasonable medical
 18 judgment whether the patient is no longer incapacitated, shall certify the decision and the basis
 19 therefor in the patient's medical record, and shall notify the patient, the designated health care
 20 decision-maker, and the person who initiated the redetermination of capacity. Rights of the
 21 designated health care decision-maker shall end upon the physician's certification that the patient is
 22 no longer incapacitated.

23 404.1107. No health care provider or health care facility that makes good faith and
 24 reasonable attempts to identify, locate, and communicate with potential designated health care
 25 decision-makers in accordance with sections 404.1100 to 404.1110 shall be subject to civil or
 26 criminal liability or regulatory sanction for the effort to identify, locate, and communicate with such
 27 potential designated health care decision-makers.

28 404.1108. 1. A health care provider or a health care facility may decline to comply with the
 29 health care decision of a patient or a designated health care decision-maker if such decision is
 30 contrary to the religious beliefs or sincerely held moral convictions of a health care provider or
 31 health care facility.

32 2. If at any time, a health care facility or health care provider determines that any known or
 33 anticipated health care preferences expressed by the patient to the health care provider or health care
 34 facility, or as expressed through the patient's designated health care decision-maker, are contrary to
 35 the religious beliefs or sincerely held moral convictions of the health care provider or health care
 36 facility, such provider or facility shall promptly inform the patient or the patient's designated health
 37 care decision-maker.

38 3. If a health care provider declines to comply with such health care decision, no health care
 39 provider or health care facility shall impede the transfer of the patient to another health care
 40 provider or health care facility willing to comply with the health care decision.

41 4. Nothing in this section shall relieve or exonerate a health care provider or a health care
 42 facility from the duty to provide for the health care, care, and comfort of a patient pending transfer
 43 under this section. If withholding or withdrawing certain health care would, in reasonable medical
 44 judgment, result in or hasten the death of the patient, such health care shall be provided pending
 45 completion of the transfer. Notwithstanding any other provision of this section, no such health care
 46 shall be denied on the basis of a view that treats extending the life of an elderly, disabled, or
 47 terminally ill individual as of lower value than extending the life of an individual who is younger,
 48 nondisabled, or not terminally ill, or on the basis of the health care provider's or facility's

1 disagreement with how the patient or individual authorized to act on the patient's behalf values the
2 tradeoff between extending the length of the patient's life and the risk of disability.

3 404.1109. No health care decision-maker shall withhold or withdraw health care from a
4 pregnant patient, consistent with existing law, as set forth in section 459.025.

5 404.1110. Nothing in sections 404.1100 to 404.1110 is intended to:

6 (1) Be construed as condoning, authorizing, or approving euthanasia or mercy killing; or

7 (2) Be construed as permitting any affirmative or deliberate act to end a person's life, except
8 to permit natural death as provided by sections 404.1100 to 404.1110."; and

9
10 Further amend said bill by amending the title, enacting clause, and intersectional references
11 accordingly.